WINNIPEG COMMUNITY TAXI ASSOCIATION
SUBMISSION TO CITY OF WINNIPEG COUNCIL - MARCH 24, 2022

This submission is provided by Pitblado Law (Benjamin Hecht and Andrew Buck), on behalf of our client, the Winnipeg Community Taxi Association (the "**Association**"). Thank you for the opportunity to provide comments regarding proposed amendments to the *Vehicles for Hire By-law* (the "**VFH By-law**") on behalf of the Association.

The Association is the unified voice for Winnipeg's largest taxicab companies, Unicity Taxi and Duffy's Taxi. It represents the interests of the vast majority of small business taxi owners in this city and provides advocacy on matters of industry concern.

This submission concerns Item No. 3 from the March 8, 2022 report of the Standing Policy Committee on Infrastructure Renewal and Public Works, being the Vehicles for Hire Annual Report. We previously provided written and oral submissions to the Public Works Committee, at its March 8, 2022 meeting. Our written submissions are attached for ease of reference and we invite Council to review our detailed submissions on the entirety of the Vehicles for Hire Annual Report (including the proposed amends to the VFH By-law).

While our position and comments as expressed in our previous written submissions remain, we wish at this time to focus on a discrete aspect of the Public Works Committee report, as amended by the Executive Policy Committee on March 16, 2022:

> "3. That the draft amending by-law attached as Appendix B, which includes amendments to the Vehicle for Hire By-law as well as the Municipal By-law Enforcement Act Enabling By-law, be approved, and the Winnipeg Public Service be directed to report back to the Standing Committee at its September 7, 2022 meeting on its collaboration with the industry on proposed section 46(3) of the by-law."

It is respectfully submitted that the proposed amendments to the VFH By-law (and in particular those that involve driver conduct and hand-held electronic device usage) **do not contemplate a codified, procedurally fair investigation and enforcement process**. For this reason, the Association continues to oppose the proposed amendments to the VFH By-law as they are currently written. Simply stated, this By-law is not ready to be proclaimed into law.

We ask Council to direct the Public Service to prepare revisions to the VFH By-law in order to correct these deficiencies. We would be pleased to collaborate and cooperate with the Public Service to facilitate the needed and recommended amendments. To be clear, the Association agrees with the objective of promoting public safety, which includes passenger and driver safety. But it must be done in a procedurally fair manner.

The Association spoke to these concerns at the March 8, 2022 Public Works Meeting and at that time provided the detailed written submission which is attached to this submission.

We note that at that time, neither representatives from the Vehicle for Hire Office ("**VFH**"), delegations who spoke on these issues nor anyone else presented a compelling reason why the driver conduct enforcement provisions should not involve an investigatory process, before any fines are laid.

At the March 8, 2022 meeting, VFH suggested that the driver conduct provisions that are found in the proposed section 46(3) of the VFH By-law were no different in substance to the parallel provisions that were found in the predecessor taxicab legislation. This is true, except that the predecessor provisions were not enforced by a procedure which required no investigation or notice to a driver, before a fine is laid. That is an important distinction.

The messaging from VFH, communicated at the March 8, 2022 meeting, appears to be that the codified procedural safeguards the Association is seeking are not necessary, because that is not how VFH operates, in practice. At the meeting, Mr. Heather indicated, among other things:

> "They're concerned that we are just going to write tickets every time we get a complaint, which is categorically not true. We have very few offences in the by-law that we would consider roadside offences that are basically handed out with little to no investigation, because they're straightforward … When we receive a complaint, we conduct an investigation. We receive that complaint, we consider that complaint, we reach out to the parties involved … if it's a taxicab involved, we download the video from the camera, and the officers view it."

Given the sometimes difficult past relationship between the industry and VFH (which it is acknowledged both sides are working to repair), Council may appreciate that bare assurances – not codified in the VFH By-law – offer little comfort to drivers.

In addition, if the requested procedural protections are how VFH has and intends to operate in practice, what is the harm from codifying those protections in the VFH By-law, so as to allow for uniform and transparent application of the enforcement provisions, moving forward? It is true that tickets may be appealed to screening and adjudication, but only at the initiative of the driver and only after they have first been fined. Further, any codification of these provisions does not need to prescribe a particular investigation process – rather, the request is simply that some reasonable investigation process (the detail of which might be determined on a case-by-case basis) occurs before a ticket is written.

The Public Works Committee's initial recommendation, supported by the Executive Policy Committee, includes direction to the Public Service to report back to the Committee in September as to its collaboration with the industry on these provisions of the VFH By-law. This is certainly appreciated by the Association, but begs the question – if collaboration and consultation reveals the provisions are "not working", is it equitable to expect the industry to labour under those conditions, until that time? And, we see no firm guidance or direction to the Public Service on the extent to which it should collaborate with the industry in the meantime. And further, how would the City go about fixing any issues in the fall, should they be confirmed?

Council has an opportunity now to get it right and the Association strongly requests that the opportunity be taken.

The Association will not propose to Council specific amendments to the VFH By-law. That is the role of the Public Service (including the City's legal department), though of course, the Association would be pleased to provide further input throughout the review process. This includes review and consultation with community stakeholders. The Association again extends an invitation to consult regarding these important issues to Ms. Sansregret of the Winnipeg Indigenous Friendship Centre Inc.

The Association has heard the submissions of other delegates on these issues, as well as the remarks of Councilors at previous hearings in Council Chambers, about the importance of responding quickly and effectively to passenger safety concerns. Again, we acknowledge those lived experiences and do not wish to detract from them; we wish to reiterate and emphasize that the Association is committed to being part of the solution. And while we recognize the significant desire to move ahead quickly, we caution you that any solution must be fair and workable, and should not require any sacrifice to basic procedural safeguards in the name of expediency.

Further, and of considerable import to the Association, any focus on safety **must also consider driver safety**. We note that driver safety was not referenced in the annual report. Studies show that, statistically, taxi drivers have the "highest rate of homicide related to their occupation" (see, for example, a 2011 Statistics Canada report). These numbers are higher than police officers, jewelers, gas-station attendants and security guards. In Winnipeg, a driver was killed on the job only two years ago.

Council should be mindful that drivers regularly are subjected to abuse, racism, threats, assaults and robbery. Drivers are faced with so-called fare jumping or theft on a frequent basis but little or nothing is done to fine or prosecute offenders. The Association acknowledges and appreciates the recommendation to fund a driver safety awareness initiative but this has to be accompanied by material actions that include consequences to protect drivers.

The Association has in the past called for the establishment of a joint working group to conduct an overall review of VFH By-laws and regulations with the City. In addition to these passenger and driver safety issues, the Association seeks to have a broader review of other important matters, especially the challenges the taxi industry has faced with recruiting and deploying drivers because of the COVID-19 pandemic. This would include streamlining the licensing and approval process for taxi drivers, so that it is on a level playing field with the process that applies to Personal Transportation Provider (PTP) drivers.

The Association strongly rejects any suggestions that it is merely seeking to delay these matters. To the contrary, despite not being consulted on the proposed by-law changes that are included in the annual report, once it was given notice of these proposed amendments, it communicated early and often with VFH.

Our preference was to work collaboratively with VFH to be able to present a uniformly supported package of safety measures to the Public Works Committee, but given the scarcity of time, that has not been possible. In the Association's view, its concerns on these points should not be surprising and it is unfair to place the blame on the Association for any further delays.

We thank you for your consideration in this matter and look forward to continuing to explore and discuss collaborative solutions in future.

WINNIPEG COMMUNITY TAXI ASSOCIATION
SUBMISSION TO CITY OF WINNIPEG STANDING
POLICY COMMITTEE ON INFRASTRUCTURE RENEWAL AND PUBLIC WORKS

This submission is provided by Pitblado Law (Benjamin Hecht and Andrew Buck), on behalf of our client, the Winnipeg Community Taxi Association (the "**Association**"). Thank you for the opportunity to provide comments regarding proposed amendments to the *Vehicles for Hire By-law* (the "**VFH By-law**") on behalf of the Association.

The Association is the unified voice for Winnipeg's largest taxicab companies, Unicity Taxi and Duffy's Taxi. It represents the interests of the vast majority of small business taxi owners in this city and provides advocacy on matters of industry concern.

At the outset, we wish to confirm that the Association does not take issue with many aspects of the proposed / draft amendments to the VFH By-law and does not view it necessary to delay their implementation. Rather, the Association's concerns are targeted to a few specific proposed amendments.

The Association is encouraged by its ongoing dialogue with the City's Vehicle for Hire Office ("**VFH**") and expects that dialogue will continue. As set out in this submission, the Association strongly believes that its concerns with the proposed amendments to the VFH By-law can be addressed in the fullness of time through further consultation with VFH regarding areas of industry concern.

The Association understands and appreciates the objectives which are meant to be achieved by the proposed amendments. Safety of all passengers and drivers is paramount. No one would assert otherwise. However, the Association believes that any improvements related to safety as reflected in the VFH By-law must approach the issue from the perspective of both passengers and drivers, **and must be procedurally fair to all involved**. The Association's concerns relate to the proposed enforcement procedure for the driver conduct provisions of the VFH By-law, and not the prohibition against driver misconduct, itself. We suggest that a transparent and fair enforcement process will help promote the objectives that are sought to be achieved for the benefit of all.

Reported incidents of passenger safety concerns are important and merit a proper response. However, drivers also have safety concerns, and these concerns are not reflected in any of the proposed amendments to the VFH By-law. Further, while the Association has a zero tolerance policy on sexual harassment and other forms of driver misconduct, it is important to note that drivers provide a vital service to individuals, and sometimes, the delivery of that service occurs under circumstances that are precarious to drivers (including from the perspective of safety and economic concerns). Any solution must therefore reflect a balanced approach toward ensuring the safety of passengers and drivers.

The taxi industry wants to be part of the solution. We would welcome the formation of a working group with representation from the taxi industry and VFH. That working group could then review and propose solutions to some of the issues which the amendments to the VFH By-law are intended to address. The Association believes that the taxi industry has an important perspective that can and should be considered, before some of the provisions of the proposed amendments are finalized.

The Association would therefore ask this Committee to give consideration to further discussion about and refinement to the aspects of the proposed amendments to the VFH By-law which are discussed in this submission. A summary of the Association's position on specific aspects of the proposed amendments follows below.

Amendment Reference	**VFH By-law Reference**	**Comments**
9(1) & 12	46(2)(b) & 53(b)	These clauses propose to replace references to "charges **laid** against" a taxi driver, to "charges **initiated** against" a taxi driver. The Association understands from discussions with VFH the intent behind this change, but requests a refinement to the VFH By-law, to add certainty and clarity by defining the concept of "***initiating***" charges. Further clarity will assist with future enforcement of the VFH By-law, which will benefit VFH should the need arise.
9(2)	46(3)	This clause describes prohibited conduct which would be enforced through the summary procedure authorized under *The Municipal By-law Enforcement Act* ("**MBEA**"). The Association agrees that provisions that set clear expected standards of behaviour and consequences for failure to meet those provisions are in everyone's interests. However, those provisions should be concisely and objectively worded and capable of clear and consistent application. There is a possibility of unintended consequences arising from the proposed wording of the clause (for example, as applied to tip prompts on point of sale devices or automatic door locks on moving vehicles). The Association appreciates this may not be the intent of these provisions, but if so, it would be helpful to have that intent captured in the VFH By-law so as to avoid inconsistent application of these provisions. The Association also has significant <u>procedural</u> concerns. The MBEA summary procedure is in our view ill-suited to those incidents that may not be simple and which may involve issues of credibility. Allegations of driver misconduct are not the same as parking tickets, which the Association understands formed the basis for the move to the MBEA process. The Association believes strongly that VFH should gather and review <u>all</u> of the facts, <u>before</u> a ticket is issued. It is true that a ticket may be challenged through the MBEA's review process, but proceeding in that manner places the onus on drivers to instigate the investigation process, <u>after</u> the ticket has already been issued. Any driver conduct provisions should therefore involve some element of investigation, **before a ticket is issued**. The Association understands this is how VFH operates, in practice, and it may be how these provisions are intended to operate, moving forward. Again, however, this is not reflected clearly in the VFH By-law and in the Association's view, codifying these matters in the text of the VFH By-law is important and merits further consideration. To be clear, inappropriate driver behaviour should <u>not</u> be condoned. The Association's position is simply that if a fine is to be issued, it is important to ensure the person issuing the fine has undertaken the necessary steps to hear from all sides and to determine what has occurred. That is in everyone's interests.

Amendment Reference	VFH By-law Reference	Comments
10 & 18(4)	46.2	These clauses would introduce contravention of the handheld electronic device usage prohibitions in *The Highway Traffic Act* ("**HTA**"), as a distinct contravention of the VFH By-law which is punishable by a separate additional fine. The Association understands the rationale behind this amendment to be that a violation of the HTA's handheld electronic device usage prohibitions should result in an additional and separate fine, under the VFH By-law, in incidents where passenger safety has been put at risk. That rationale is understood, but again, the inclusion of the fine under the MBEA regime – which allows a ticket to be written and issued without any investigation or due process – may create unfairness to drivers. VFH has access to surveillance from vehicles. If safety is a concern, then VFH can and should, at a minimum, review that footage and speak to the driver before a ticket is issued. This communication with the driver may have the additional benefit of allowing VFH to educate the driver about the specific concerns that have been raised so as to promote future compliance with the desired behavioural outcomes. The Association appreciates that, as with the driver conduct provisions of the VFH By-law, an approach that involves investigation on the part of VFH may increase the administrative burden on that office. But, if the objective is to promote safety, then the Association would respectfully submit that this is a cost that can and should be borne by the City, rather than individual drivers. Further, the Association does not understand these changes to be a revenue generation measure and so additional administrative costs in the name of promoting safety and ensuring that due process is observed should not stand in the way of a full and proper investigative process, which should be mandated by the VFH By-laws. As with the driver conduct provisions, the handheld device provisions should not be enforced under the summary MBEA procedure. If the intent is that VFH will in practice conduct an investigation before a ticket is issued, then the VFH By-law should be further amended so that the requirement for an investigation is codified. Finally, if the intent of this provision is to issue a fine following the issuance of a ticket under section 215.1 of the HTA, the text of the proposed amendment might be specifically amended to state as such. As proposed, the wording requires the driver to "comply with" that section of the HTA, which could create a situation whereby a peace officer declines to issue a ticket for a contravention of the HTA's handheld device provisions, but VFH, on the basis of a passenger complaint or otherwise, nevertheless decides to levy a fine. An outcome where the same legislative provisions are enforced differently, on the same facts, by different government agencies, should be avoided.

Next steps and further consultation

The Association remains eager to discuss these proposed amendments to the VFH By-law and broader issues of concern at an agreeable time. While the Association is opposed in principle

to these changes as proposed for the reasons discussed, it would be pleased to collaborate with VFH and others on a proposed solution.

The Association appreciates the City's willingness to continue to work with the Association on these issues and looks forward to continued dialogue, in that regard. Should the Committee wish to discuss this matter further please do not hesitate to contact the Association.

We thank you for your consideration in this matter and look forward to continuing to explore and discuss collaborative solutions in future.